

OREGON NATURAL RESOURCES COUNCIL

IBLA 92-5

Decided January 9, 1992

Appeal from a decision of the Area Manager, Myrtlewood Resource Area, Oregon, Bureau of Land Management, denying a protest of a timber sale and implementing the sale. OR-12O-TS91-315.

Affirmed.

1. Contests and Protests: Generally--Rules of Practice: Appeals: Statement of Reasons

A decision by BLM may be affirmed where the statement of reasons filed in support of appeal fails to point out error in the decision under review but instead merely reiterates arguments addressed to BLM in a protest and where our review finds the BLM decision on the protest is comprehensive and correctly addresses each of the arguments contained in the protest.

APPEARANCES: Mark M. Hubbard, Projects Coordinator, Oregon Natural Resources Council, for appellant; Robert W. Bierer, Myrtlewood Resource Area Manager, North Bend, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

The Oregon Natural Resources Council (ONRC) has appealed an August 1, 1991, decision by the Bureau of Land Management (BLM), Myrtlewood Resource Area Manager, denying its protest and request for stay of the Jones Creek Salvage Timber Sale. 1/

The sale area (2 acres) is in sec. 26, T. 29 S., R. 11 W., Willamette Meridian, Coos County, Oregon. The purpose of the sale was to salvage 84 Mbf of windthrown timber (Douglas Fir and Grand Fir) which would otherwise be lost to theft or decay. A decision record and finding of no significant environmental impact with respect to the sale were approved on May 24, 1991.

On March 13, 1991, ONRC filed with the Area Manager a protest and request for stay of the sale. ONRC alleged that the sale was not in accord

1/ The decision states that the "Jones Elk Timber Sale was dropped due to logging feasibility" and the reduced sale was referred to as the "Jones Creek Salvage Timber Sale."

with the recommendations of the "Interagency Scientific Committee [ISC] to Address the Conservation of the Northern Spotted Owl." Further, ONRC challenged the sale as being in violation of various statutes including the Endangered Species Act (ESA), 16 U.S.C. § 1536 (1988), the National Environmental Policy Act, 42 U.S.C. § 4332 (1988), as well as multiple-use principles under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1988). ONRC also alleged that BLM failed to consider the impact of the sale on the viability of the marbled murrelet, a seabird of the Northwest.

In his decision, the Area Manager specifically responded to the concerns in ONRC's protest. He noted that the sale involved only "windthrown timber," had been determined to have no effect on northern spotted owl (NSO) habitat, and did not violate or ignore ISC guidelines. He noted that storm damage had reduced the canopy below the 40-percent level and that the sale only involves down timber. The Area Manager explained that since the sale was determined to have no effect on the NSO, consultation with the U.S. Fish and Wildlife Service (FWS), under the ESA was not required and that under BLM's timber harvesting policy (the "Jamison Strategy"), all actions impacting the NSO were submitted to FWS for consultation. The Area Manager further pointed out that impacts were analyzed in the sale environmental assessment (EA), and that as a result of that assessment it was determined that no significant impacts, beyond those already addressed in the South Coast/Curry final environmental impact statement (FEIS), to which the EA is tiered, would occur. With respect to multiple use, the Area Manager stated that a multiple-use analysis had been performed and documented in the South Coast/Curry management framework plan and FEIS. The Area Manager observed that the decision to award the Jones Creek sale was not a land-use allocation decision and therefore no multiple-use analysis was required under FLPMA. With respect to the marbled murrelet, the Area Manager stated that BLM was cooperating with other agencies in investigating this species about whose habitat preferences very little is known. He stated that the Jones Creek sale was a "100 percent salvage sale of down trees [which would] have no effect on the nesting habitat of the marbled murrelet" (Decision at 7).

On August 12, 1991, the sale was placed in full force and effect (43 CFR 5003.3(f)) and was awarded to a logging contractor. The record contains a September 25, 1991, "Timber Sale Contract Status Report" indicating that cutting on the Jones Creek salvage sale began on September 9, 1991, and that "[y]arding and hauling * * * is presently under way." As of the date of the status report it was anticipated that the contract would be completed by mid-October 1991.

In its appeal to this Board ONRC has submitted essentially the same document, containing 25 numbered paragraphs, which it submitted as its protest. ONRC has made no effort to point out how the Area Manager's decision on the protest is in error. As the Area Manager observes in his answer, ONRC's challenges to this sale are the same as those raised in almost every sale offered by BLM in Oregon this fiscal year, regardless of whether or not they bear any relevance to the particular sale.

[1] We have repeatedly stated that an appellant is required to point out affirmatively why the decision under appeal is in error. In Re Mill Creek Salvage Timber Sale, 121 IBLA 360, 362 (1991); Andre C. Capella, 94 IBLA 181 (1986); United States v. De Fisher, 92 IBLA 226 (1986). In Shell Offshore, Inc., 116 IBLA 246, 250 (1990), we held that this requirement is not satisfied if the appellant "has merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision * * * addressing these points." BLM has provided a comprehensive decision fully addressing the allegations contained in the protest and ONRC has not attempted to show any error in the decision. Further, we recently affirmed BLM's denial of protests to various salvage timber sales, rejecting many of the same arguments raised by ONRC in this case, In re Bar First Go Round Salvage Sale, 121 IBLA 347 (1991); and our independent review of the record in this case discloses no error. Under such circumstances it is appropriate to affirm BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Byrnes
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge